# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**R.S.A. No. 207 of 2006.**

**Judgement reserved on:**

**Date of decision** : May 12, 2006.

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Yog Raj ……. Appellant.

Versus

Smt. Shakuntla Devi & ors. ……. Respondents.

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Coram

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

*Whether approved for reporting?*

**For the appellant:** Mr. Sanjeev Kuthiala, Advocate.

**For the respondent:**

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***Surjit Singh J. (Oral).***

Heard and gone through the record. Appellant- plaintiff filed a suit, seeking specific performance of some oral agreement for sale of the share of the respondent- defendants in 2 Kanals 12 Marlas land, the description of which was given in the plaint. Defendants contested the claim and denied that any oral agreement, as alleged by the appellant- plaintiff, was there. Learned trial court returned the finding that there was no oral agreement. The finding has been affirmed by the first appellate court.

Now the appellant- plaintiff has come to this Court. There is

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*Whether reporters of local Papers may be allowed to see the judgment?*

concurrent finding by the two courts below that there was no oral agreement. I see no reason to disagree with the finding of the courts below. The finding is based on the appreciation of oral evidence. There is nothing on record suggesting that the finding is perverse or the evidence of the witnesses has been misread or misconstrued.

Learned counsel says that the first appellate court has made an observation in its judgement that the appellant is not in possession of the suit land, whereas in fact the appellant has been in possession of the suit land even prior to the alleged oral agreement, as a tenant. Whether the appellant was/ is in possession of the land, in question, is not a relevant question. Therefore, the observation made by the first appellate court that the plaintiff is not in possession is not to be deemed as a finding binding upon the parties, because such a question was not required to be determined by the court in the present lis, which is simply a case for specific performance of an alleged oral agreement.

With the aforesaid observation, the appeal is dismissed as no substantial question of law arises.

**CMP No. 301 of 2006.**

Infructuous.

**May 12, 2006** **(Surjit Singh),**
**(Hem)** **Judge.**